

REMARKS

The Examiner states that restriction to one of the following groups is required under 35 U.S.C. §121:

- I. Claims 1-5, and 8-20, drawn to a recombinant DNA molecule and vector comprising a DNA sequence encoding a protein with the biological activity of a 2-deoxyglucose-6-phosphate phosphatase, a host cell, a kit, a process for selecting transformed plant cells, a transgenic plant cell, tissue, plant, harvest products, and propagation material, and use of a DNA molecule.
- II. Claims 6-20, drawn to a vector comprising a DNA sequence encoding a protein with the biological activity of a 2-deoxyglucose-6-phosphate phosphatase and at least one further recombinant DNA molecule, a host cell, a kit, a process for selecting transformed plant cells, a transgenic plant cell, tissue, plant, harvest products, and propagation material, and use of a DNA molecule.

The Examiner states that the inventions of Groups I and II are distinct because the DNA sequences of these two groups are distinct products comprising structurally and functionally

distinct sequences that can be used in different methods.
Applicants traverse.


The Manual of Patent Examining Procedure (MPEP) states that there are two criteria for a proper requirement of restriction between patentably distinct inventions. The first is that the inventions must be independent or distinct as claimed. The second is that there must be a serious burden on the Examiner if restriction is not required. The MPEP further states that "[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions." MPEP § 803.

The claims of Group I and Group II both are characterized by the same technical feature, i.e., a DNA sequence encoding a protein with the biological activity of a 2-deoxyglucose-6-phosphate phosphatase. Searches conducted in connection with Group I, thus, will be co-extensive with searches in connection with Group II. Group II, thus, requires no additional searches. Accordingly, searching Groups I and II together would not be unduly burdensome.

For this reason, applicants request reconsideration and withdrawal of the proposed requirement for restriction. If the Examiner does not agree with this proposal, pursuant to 37 C.F.R. § 1.143, applicants provisionally elect with traverse the claims

of Group I for initial substantive examination. This election is made expressly without waiver of applicants' rights to continue to prosecute and to obtain claims to the non-elected subject matter either in this application or in other applications claiming benefit herefrom.


Respectfully submitted,



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